

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.5634 of 2007

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Dated:29.03.2007

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Between:

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Smt.D.Saraswathi and others.

...Petitioners.

and

Government of Andhra Pradesh and others.

...Respondents.

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.5634 of 2007

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ORDER:

The petitioners brought about partition of their joint family properties through a partition settlement deed, executed on 04.09.2006. It was presented before the 4th respondent, for registration. Placing reliance upon G.O.Ms.No.1129, dated 13.06.2005, the petitioners paid stamp duty at 1%, on the value of the properties covered by the deed. The 4th respondent issued a notice, dated 17.01.2007, stating that the document is liable to be leveable stamp duty at 3% and the petitioners are required to pay the balance. The same is challenged in this Writ Petition.

It is urged that when the Government itself issued a notification in exercise of powers conferred under Section 9 of the Indian Stamp Act, 1899 (for short 'the Act'), directing that the stamp duty payable on partition deeds, among family members, is 1%, the 4th respondent is not justified in levying higher stamp duty.

On behalf of respondents, a counter-affidavit is filed. Reference is made to a circular, dated 28.10.2005, issued by the Inspector

General of Registration and Stamps. It is also stated that clarification is sought from the 3rd respondent-District Registrar.

Heard the learned counsel for the petitioners and learned Government Pleader for Revenue.

The notification issued through G.O.Ms.No.1129, dated 13.06.2005, was published in the A.P. Gazette, dated 20.06.2005. The relevant clause reads as under:

"1. In exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), the Governor of Andhra Pradesh hereby reduces the Stamp Duty from 3% to 1% payable in respect of Partition Deeds under Article 40 of Schedule I-A to the Indian Stamp Act, 1899, when the deeds relate to partition of properties among family members.

From this, it is evident that, if the partition deed is in relation to a partition among family members, the stamp duty payable on the document is 1%. In the instant case, the parties to the documents are either widows or children of three brothers, by name, Venkatachalam Nattar, Lakshmana Nattar and Ramamurthy Nattar. The said three brothers died while the family remained in joint. The status of the family continued to be joint, as long as it was not partitioned. The 4th respondent does not dispute the relationship among the parties. Further, no basis is indicated to treat them as strangers to each other, or as not constituting members of the same family. Even the memo issued by the Inspector General of Registration and Stamps, does not support the view taken by the 4th respondent. Further, the contention that a clarification is sought from the 3rd respondent under Section 40 of the Act, cannot be countenanced. The reason is that the said provision does not empower the issuance of clarifications etc. The only method through which such a dispute can be referred to, is by making a reference under Section 47-A of the Act. The said course was not adopted. Further, the provisions of the Act and the G.O., referred to above, are very clear and there does not exist any doubt, in

this regard.

The Writ Petition is allowed and the 4th respondent is directed to apply para I of G.O.Ms.No.1129, dated 13.06.2005, in relation to the document of the petitioners, for registration. There shall be no order as to costs.

Dt.29.03.2007

L.NARASIMHA REDDY, J

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GJ